March 6. 1754.

Unto the Right Honourable the Lords of Council and Session,

THE

PETITION

OF

John Cameron of *Fassfenn*, Prisoner in the Tolbooth of *Edinburgh*,

Humbly sheweth,

THAT your Petitioner was apprehended, and incarcerate in the Garrison of *Fort-William* upon the 28th of *April* last; and upon the 6th of *May* thereafter, he was committed Prisoner to the Castle of *Edinburgh*, upon a Warrant from the Lord Justice-Clerk, on a Charge of High Treason.

That having obtained Letters of Intimation, and served the same against his Majesty's Advocate, he flattered himself with the Hopes of obtaining his Liberty, or of being brought to Trial: But to his very great Surprise, when the sixty Days were near expired, a new Complaint was presented to your Lordships, by his Majesty's Advocate, upon the 10th of *August* last, charging the Petitioner, as being Guilty, Art and Part, of forging certain Writings, Vouchers of his Claim on the Estate of *Lochiel*, or of using the same, knowing them to be false and forged.

That several Witnesses having been examined in the Exhibition, the Lord Advocate gave in Articles of Improbation upon the 9th of *January* last; and Articles approbatory, and Answers, were given in for the Petitioner upon the 16th of the same Month.

That however new or extraordinary it might appear, for your Lordships to proceed to the Trial of a Forgery, where the Writs alledged to have been forged, were lost or amissing, and could not be produced, especially as the Law seems to point out a different Remedy; yet the Petitioner, conscious of his own Integrity and Uprightness, waved every Objection, that the Facts might be brought to an open Trial, and the whole to a speedy Issue. And therefore, on the Petitioner's Motion, on the 17th of *January* last, a Diligence was granted to both Parties, for proving their Articles improbatory and approbatory. In consequence thereof, a Variety of Witnesses have been examined *hinc inde*.

That the Petitioner enjoys a fair and unblemished Character, is proven in the distinctest Manner; that he is honest in all his Dealings, friendly to those in Distress, or who have Occasion for his Assistance; and that he is in opulent Circumstances: It will not therefore easily gain Credit, that the Petitioner has committed a Crime which is only attempted by those of abandoned Characters, ruined Fortunes, and necessitous Circumstances.

That the Matter does not rest upon Character solely: For, so far as the Petitioner can recollect from Memory, it is in Proof, by the Oath of *Alexander Stewart* Notary-public, that the original Bonds granted by *John Cameron* of *Lochiel* in the 1713 to *Evan* and *Alexander*, his younger Children, were wrote by the said *Alexander Stewart* at *Lochiel*'s Desire, who signed them; and that the said *Alexander Stewart* is an instrumentary Witness: And *Clunes* depones, That, in Harvest 1713, *John Cameron* of *Lochiel* shewed the said Bonds of Provision to him.

That as to the Bonds of Corroboration thereof, being granted by the late *Donald Cameron* of *Lochiel*, few Witnesses have hitherto been examined. But the Petitioner remembers, that the said *Alexander Stewart* deponed, (though he could not be positive about the Year), that the late *Lochiel* spoke to him about giving further Security to *Alexander* and *Evan Camerons* for their said Provisions: And *Alexander Cameron* Tacksman of *Auchnaberrie* says, that in the Year 1746 *Lochiel* told him, that the Petitioner had Right to the said Bonds of Provision.

That these Bonds of Corroboration were assigned to the Petitioner, appears from what *George Cuming* depones, That *John Cameron* the Bouman told him, that *Alexander* had assigned and delivered his Bonds to the Petitioner, and that the said *Cameron* was

was an instrumentary Witness in the Assignation: And the said *Alexander Stewart*, in the 1734, wrote out a Deed for *Evan*, either a Factory or Conveyance, the Day before *Evan* sailed for the *West Indies*. And the said *Alexander Cameron* Tacksman of *Auchnaherrie* says, that in the 1746 the late *Lochiel* assured him, that *Alexander* and *Evan* had conveyed their Provisions to the Petitioner.

That as to *Appin*'s Bond, the said *Alexander Stewart* remembers that he wrote the same, and that he is an instrumentary Witness; and both he and *Clunes* saw the Money paid down, and the Bond signed. *Appin* remembers, that he asked Payment from the late *Lochiel* before the 1745; and thereafter, in the 1748, granted Assignation of the same to the Petitioner, and obtained a Bill from him for the compounded Sum; of which Bill he afterwards got Payment.

That with respect to *Bennet*'s Bond, it was not only known to several of the Witnesses before the 1745, but actually pledged with *George Cuming*'s Mother, for several Years, for a Debt of *L. 5 Sterling*, and at *Bennet*'s Desire delivered to the Petitioner, and an Assignation granted to him, wrote by Mr *Thomas Montfad*, late Minister of *Kilmelly*, deceased; and providentially there is still one instrumentary Witness alive, who, when examined, will clear up this Affair. But *Patrick Campbell* late Factor on *Lochiel* has already given Evidence, that, when Factor, *Bennet* craved him for Payment; and told him at the same Time, that he had conveyed the Bond to the Petitioner. And the said *Alexander Cameron* Tacksman of *Auchnaherrie* depones, he was present at *Fassfern* that Night when *Bennet* delivered the Bond, with an Assignation thereto, to the Petitioner.

That as to the *L.* 1000 *Sterling* Bond, *Charles Stewart* Prisoner in the Castle of *Edinburgh*, who wrote and witnessed the same, declares it a true Bond. *Clunes* was present at the Transaction, saw Bills delivered up, and *L.* 500 *Sterling* told down; Part of which he heard the Petitioner had borrowed from his Father-in-law: And further, the late *Lochiel* told the said *Alexander Cameron*, that he had borrowed *L.* 1000 *Sterling* from the Petitioner, and given Security for the same in the 1741.

That such being the State of the Case, upon the Proof already adduced, which will hereafter be supported and corroborated in every Article, notwithstanding of the Death of some of the Witnesses, the Incapacity of others to be admitted as Evidences, the great Age and natural Decay of Memory in some others; it must strike every body, that the Foundation of this unprecedented Inquisition and Trial, is *funditus* overturned: And no Person whatever can force himself to lay any Weight, much less to believe what the Prosecutor calls his *credible Information*.

The Petitioner does not mean to call in question the Power and Jurisdiction of your Lordships: But he has always considered the Act of Parliament 1701, as the Basis of the personal Security and Liberty of the Subject. It establishes the Method of admitting to Bail, or of compelling the Informer or public Prosecutor to bring on the Trial; and the Number of Days are ascertained within which it must be finally concluded, even in Cases of the greatest Importance, in *High Treason*.——There are particular Exceptions in that Act, as Robbery and Depredation in the Borders, and in the Highlands, and some others, which are left to the Determination of the Common Law, or of particular Statutes: But with respect to Falsehood or Forgery, the Petitioner can observe no such Exception, nor the least Colour of a Pretence for drawing such Inference, if it could be admitted in a Case of such inestimable Value,—*the Liberty of the Subject*.

That the Prosecutor has thought it a sufficient Answer, That the Petitioner was charged with a capital Crime, and therefore cannot be admitted to Bail.——But, with great Submission, the Petitioner denies both the Premisses and Conclusion.

That the Petitioner is charged with Falsehood or Forgery, upon what the Prosecutor calls a *credible Information*, cannot be refused. He feels the Severity and Hardship of it at present. But then he avers, that such Information is clearly and evidently confuted by the Proof already adduced; and that Falsehood, which does consist of such a Diversity of criminal Facts, does necessarily infer an arbitrary Punishment only.——For the precise Crime cannot be known, till after a long Investigation and Scrutiny, by Inferences, Witnesses, *comparatione literarum*, and by Proofs *hinc inde*; insomuch that the Prosecutor will not, after all the Inquiry he has made, take upon him to restrict his Libel to a direct Charge of actual Forgery, or Accession thereto; but rather chuses daily to move your Lordships to search further and further, and investigate for the Public, in order first to ascertain the special Charge, and then determine the Punishment. Is it not then most absurd to allege, that the Petitioner stands charged with a capital Crime, which, without Regard to the articles improbatory, must solely arise from a Chain of Facts and Circumstances, hereafter to be proved.

That, in the *next* place, the Petitioner must beg leave to observe, Though Crimes not capital are declared bailable; and your Lordships in such Cases are required to admit to bail: yet it does not appear, that the Act 1701 prohibits Bail to be admitted, even in Cases where capital

capital Crimes are charged; and many Instances could be condescended on, where Persons charged with capital Crimes have been admitted to Bail. In the Year 1740, Sir *Robert Monro*, and his Brother *Culcairn*, against whom a Warrant from the Court of Justiciary had been issued for committing them to Prison, as Guilty, Art and Part, of Murder, were admitted to Liberty, upon finding Bail. And the same was done in the Case of *John Haldane* Collector of the Customs at *Prestonpans*, who was admitted to Bail, though committed to Prison for a capital Crime.

That if the Act 1701 had prohibited Persons accused of a capital Crime to be admitted to Bail, the Court of Justiciary would never have acted in opposition to the Statute, and given a Judgment directly contrary to Law: But as it has been the Practice of the Court of Justiciary, in Crimes of the highest Nature, where the Punishment is certainly capital, to admit to Bail; no good Reason can be shown to your Lordships for refusing Bail in the Petitioner's Case, where the Crime with which he is charged, is and must remain uncertain, until the Facts and Circumstances [illegible] by the Court.

That the Petitioner has laboured under the cruelest Confinement, in different Garrisons and Prisons, for upwards of these ten Months past, upon Suspicion only of having committed a Crime; although the Law has determined a hundred Days to be the longest Period of Confinement, for obtaining Information, and trying a Crime of the most atrocious Nature, *viz.* that of High Treason ——His Health is abating, his Constitution much impaired, and a Rheum fallen down on his Eyes, which has deprived him of any Use by Reading, *&c.* for some time past, and are daily growing worse; so that he must sink *sub squalore carceris*, unless relieved by your Lordships Justice. It cannot be the Intention of the Court, to punish any Person before Conviction; and yet there are few arbitrary Punishments inflicted by any criminal Court so severe, as what the Petitioner has unfortunately suffered already.

That your Petitioner humbly meaned himself to your Lordships at the End of last Summer-session, and craved to be admitted to Bail; which your Lordships were pleased to refuse. But Matters are greatly altered since that Period. First, The Petitioner has suffered a seven Months Imprisonment since his last Application. And then the Proof which has already been led, and shortly stated above, removes any Suspicion which might then be thought to lie against the Petitioner; and the State of his Health now requires a freer Air, and the Refreshments of a Country-life. It is indeed a Maxim of Law, *Nunquam concluditur in falso*; which does only apply to the Proof; and the Petitioner must submit to it, however slowly the Prosecutor may proceed. But it is inconsistent with the Spirit of our happy Constitution, the Laws of the Land, and would be most destructive to the Liberty of the Subject, to put it in the Power of any public Prosecutor to keep one of his Majesty's Subjects in Prison as long as he shall think proper, upon alledged Crimes, or specious Pretences. And if such was the Law, it ought not to be insisted on; as it would be a high Reflection upon the Honour and Justice of the Government, which upon all Occasions, and even when most provoked, has dealt most mercifully with the Subjects.

But if admitting your Petitioner to Bail at large should be thought too great an Indulgence, as it would furnish him an Opportunity of returning to his own Country, and employing some Part of the ensuing Vacation in looking into his own private Affairs, which are in great Confusion, and have greatly suffered through his tedious Confinement; he will accept of his personal Liberty, under whatsoever Restrictions your Lordships shall think proper to impose, was it even to be so limited, that he should not set Foot without the County of *Edinburgh*, or beyond such other Boundaries as your Lordships shall prescribe.

May it therefore please your Lordships, to take your Petitioner's Case under Consideration; and to admit him to Bail, upon such Terms, and under such Conditions, as to your Lordships shall seem just and reasonable.

According to Justice, *&c.*

JOHN CAMERON.
DAV. DALRYMPLE.

UPon this 6th *March* 1754, I *Alexander Hart*, Clerk to Mr *John Macfarlane* Writer to the Signet, Doer for the Petitioner, did intimate to Mr *William Alston* Writer to the Signet, Agent for the Crown, That Copies of the above Petition were to be put into the Lords Boxes this Forenoon, in order to be moved to their Lordships To-morrow. This I did, by delivering a Copy of the said Petition to the said Mr *William Alston*, with a Note at the Foot thereof to this Purpose, before these Witnesses, *Archibald Govan* and *William Wilson junior*, both Writers in *Edinburgh*.